UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

PCC STRUCTURALS, INC.

and **Cases 19-CA-207792**
19-CA-233690

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE W24

RESPONDENT PCC STRUCTURALS, INC.'S OPPOSITION TO THE GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO THE NOTICE TO SHOW CAUSE

COMES NOW Respondent PCC Structurals, Inc. (hereinafter "PCC" or "Respondent"), through its undersigned counsel, in response to the Order Transferring Proceedings To The Board And Notice To Show Cause dated April 10, 2019 ("NSC"), hereby responds to Counsel for the General Counsel's Motion for Summary Judgment pursuant to Section 102.24 of the Board's Rules and Regulations in the above-captioned matter.

I. INTRODUCTION

In the regular course, in a regular case, no reason exists for the Board to do anything but expeditiously grant a motion for summary judgment filed by the General Counsel in these circumstances — where the respondent-employer, as here, admits its refusal to bargain based on the earlier representation proceeding.

This is not a regular case, nor is this the regular course.

Instead, this case is the final chapter of *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the precedent that changed the unit determination standards for every union and employer in the United States and reversed *Specialty Healthcare*[1] — itself a significant precedent. Therefore, it is extremely important for the Board to have a clear and persuasive articulation of its findings on the appropriate unit in this case. In this response to the NSC, Respondent PCC explains the issues presented and submits, respectfully, that this articulation failed to occur.

PCC urges, in lieu of guaranteeing further proceedings before the federal court of appeals concerning the underlying representation case, that (1) its prior request for review be granted and the underlying petition and case be dismissed or (2) in the alternative, that the Board's recent order in the representation case be further explained. PCC fully recognizes that the Board

[1] *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) ("*Specialty Healthcare*"), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

generally grants summary judgment in test of certification cases. However, the Board has the authority to reconsider, and even reverse, a prior decision in underlying representation proceedings where special circumstances arise. *See St. Francis Hospital*, 271 NLRB 948, 949 (1984) (Board reconsidered and vacated its earlier decision in the underlying representation proceeding and formulated a revised approach to health care employee units), and *Sub-Zero Freezer Co.*, 271 NLRB 47, 47 (1984) (Board reconsidered and reversed its earlier decision in the underlying representation proceeding). Indeed, the Board recognizes within the text of its own orders granting summary judgment that respondents may properly litigate representation issues where they show special circumstances:

> …The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it shown any *special circumstances* that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. ... (emphasis added)

Here, not only do such special circumstances exist, but this case itself is a unique circumstance.

II. PROCEDURAL HISTORY

On December 15, 2017, the Board in *PCC Structurals, Inc.* overruled its prior unit determination standard and announced that it would "return[] to the traditional community-of-interest standard that [it] has applied throughout most of its history." 365 NLRB No. 160 (2017), slip op. at 7. PCC will refer to this opinion as "*PCC Structurals I*," for clarity's sake. The Board then remanded the case to Region 19 for further appropriate action, including reopening the record, if necessary, and analyzing the appropriateness of the petitioned-for unit under the standard articulated in *PCC Structurals I*. *Id.*, slip op. at 13.

On remand, the Regional Director reopened the hearing and found that the petitioned-for unit was appropriate for bargaining in his Supplemental Decision ("Supp. Dec."). PCC filed its request for review ("RFR"), and Petitioner International Association of Machinists & Aerospace Workers, AFL–CIO, District Lodge W24 ("Petitioner"), opposed the RFR. On November 28, 2018, a Board panel of Members McFerran, Kaplan and Emanuel denied review in an unpublished order. For clarity's sake, PCC will refer to this opinion as "*PCC Structurals II*."

A Board majority (Members McFerran and Kaplan) found that the petitioned-for unit of rework welders, rework specialists, and crucible repair welder shared a community of interest sufficiently separate from excluded employees to constitute a unit appropriate for bargaining, apparently under *PCC Structurals I*. For clarity's sake, PCC will call this majority the "Traditional Unit Majority." A separate majority (Members McFerran and Emanuel) agreed with the Regional Director that the petitioned-for welders were skilled journeymen craftsmen and that the petitioned-for unit was appropriate for bargaining as a craft unit. For clarity's sake,

PCC will call this majority the "Craft Majority." The unit described above was certified on May 4, 2018.[2]

Thereafter, Petitioner requested to bargain with PCC, and further requested information in connection with that bargaining request. PCC declined, which resulted in these unfair labor practice proceedings and this NSC.[3]

III. ARGUMENT

A. Summary Judgment Is Unwarranted Because the Unit Test Applied Below Was Unclear.

Importantly for the Board's consideration of issues here, the Regional Director did not actually make two separate unit determination decisions, with all due respect to the Board's discussion in *PCC Structurals II* concerning the Regional Director's order. For example, the Regional Director did not uphold the petitioned-for unit as a craft unit and then also, in the alternative, uphold it as a non-craft unit under the traditional unit standards as set forth in *PCC Structurals I.* Instead, he hybridized the two tests. Indeed, it is most accurate to state that the Regional Director *never found* that the bargaining unit at issue was appropriate *other than as a craft unit* – in other words, he did *not* find that the unit would be an appropriate unit standing alone as a non-craft unit under the general, traditional test set forth in *PCC Structurals I*:

> In sum, I find that the record establishes that the petitioned-for welders *constitute a craft unit* that shares a community of interest sufficiently distinct from excluded employees under the standard set forth in *PCC Structurals [I]*.

Supp. Dec. at 36 (emphasis added). As noted above, the Board affirmed the Regional Director's hybridized test on separate grounds, in separate majorities consisting of the Unit Majority and the Craft Majority.

This procedural history leads to several major problems, and presents special circumstances, which PCC hopes the Board can address before PCC must engage in proceedings in the federal court of appeals. The initial problem is that neither Board majority explained whether or not the Regional Director's hybridization of the craft and traditional unit tests is permissible under *PCC Structurals I.* Plainly, this is an important issue because it bears directly both on the proper analysis in this case and on the meaning of *PCC Structurals I* as the lead precedent for all parties litigating unit issues before the Board.

On this ground alone, the Board should find that summary judgment is unwarranted and reissue a published opinion in response to the RFR, reversing its decision.

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[2] Although PCC also objects to the Regional Director's notice to PCC that craft unit standards would be litigated in the remand from *PCC Structurals I*, PCC presented those arguments in the RFR and will not repeat them here, for brevity's sake.

[3] PCC concedes that there is no material issue of fact that PCC refused to bargain and refused to provide requested information to the Petitioner.

B. Summary Judgment Is Unwarranted Because *PCC Structurals II* Is Inconsistent with *PCC Structurals I*, the Governing Case.

Summary judgment is also unwarranted because the Board should first explain why *PCC Structurals II* is consistent with *PCC Structurals I*. PCC strongly believes it is not. Here, the Traditional Unit Majority appears to have departed from *PCC Structurals I* with *PCC Structurals II*. Specifically, given the extreme supervisory and physical dispersion of the employees in this case, the Traditional Unit Majority seems to have abandoned the test announced in *PCC Structurals I*.[4]

In this regard, *PCC Structurals I* originally had made clear that it "reinstated the traditional community-of interest standard" under prior case law. 365 NLRB at 1. In these findings, although the Board "express[ed] no opinion with respect to whether [this] petitioned-for unit is appropriate," *id.* at 13, n. 57, the Board also noted the Regional Director's original (and uncontested) findings that the unit conformed to no cognizable departmental lines, nor was there any degree of common supervision:

> First, the unit sought by the Petitioner does not conform to an administrative grouping or department within the Employer's organizational structure, and the employees in the proposed unit are scattered throughout numerous departments in the Portland operation. Second, the petitioned-for employees do not share common supervision. Rather, employees with a variety of job titles report to each production supervisor, and no production supervisor oversees only the petitioned-for employees.

Id. at 2. The Board also noted that the degree of PCC's functional integration was a factor favoring PCC even under the "overwhelming community of interest" of *Specialty Healthcare*:

> [The Regional Director] acknowledged that functional integration weighs in favor of finding an overwhelming community of interest between the petitioned-for employees and the rest of the production employees: rework welders and rework specialists function as part of an integrated production process, repairing defects identified by other employees and working in "rework teams" that include employees in other job classifications. He also recognized that the petitioned-for unit does not track departmental lines and the employees therein are not separately supervised.

Id. Nevertheless, the Traditional Unit Majority in *PCC Structurals II* affirmed the Regional Director's finding that, as noted above in *PCC Structurals I*, this "scattered" unit that "does not track departmental lines," and where employees "do not share common supervision," but instead "function as part of an integrated production process," is nevertheless a separate, appropriate bargaining unit under traditional standards. That is not consistent with the supposed traditional unit test resurrected by *PCC Structurals I*.

[4] PCC recognizes that Member McFerran dissented from, and does not agree with, *PCC Structurals I*. However, PCC's argument here holds true under the *Specialty Healthcare* standard as well.

It is well established that the traditional test of the Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational organizational basis. *Colo. Nat'll Bank of Denver*, 204 NLRB 243 (1973). See also *Seaboard Marine, Ltd*., 327 NLRB 556 (1999) (finding that the petitioned-for employees did not share a sufficiently distinct community of interest from other employees to warrant a separate unit and, therefore, that the unit sought was arbitrary); *Avon Prods*., 250 NLRB No. 141 (1980) (rejecting the regional director's acceptance of only certain classifications of production and maintenance employees); *Chromalloy Photographic Indus*., 234 NLRB No. 159 (1978) (rejecting the regional director's conclusion that camera repair and maintenance employees possess a community of interest separate and apart from those of other production and maintenance employees given that employer was engaged in a single highly-integrated process); *Newington Children's Hosp.*, 217 NLRB 793, 794 (1975) (Board reiterated that "a service and maintenance unit in a service industry is the analogue to the plant-wide production and maintenance unit in the industrial sector, and as such is the classic appropriate unit."); *Check Printers, Inc*., 205 NLRB 33, 34 (1973) (rejecting the regional director's conclusion that letterpress and offset pressmen were an appropriate unit); *Temco Aircraft Corp*., 121 NLRB 1085 (1958) (holding that in manufacturing industries, single plant production and maintenance units are presumptively appropriate). Tellingly here, the Regional Director did not find an appropriate unit under the *PCC Structurals I* test standing alone — instead, he first characterized the unit as a craft unit before referencing *PCC Structurals I*.

Indeed, even under the prior and now-extinct *Specialty Healthcare* test, fragmented units such as the one found here were inappropriate. *Bergdorf Goodman*, 361 NLRB 50, 52 (2014) ("The boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer," then quoting *Specialty Healthcare*, "[i]t is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how *the employer* has chosen to structure its workplace.")(emphasis in original); *A.S.V., Inc*., 360 NLRB 1252, 1255 (2014) (rejecting a proposed unit by finding that the unit sought did not trace any lines drawn by the employer, that all employees were considered to be in the same area and under the same supervision, there was no separate wage structure, and there was significant functional integration between the proposed unit and the other assembly employees); *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) ("First, the recommended unit does not track any lines drawn by the Employer, such as classification [i.e. there were four job classifications, not one], department, or function.").[5]

The Traditional Unit Majority deviated from the standard ostensibly restored by *PCC Structurals I*, as demonstrated by the above cases involving fragmented units. This should be corrected. At the least, the Board should explain why the Traditional Unit Majority upheld the Regional Director's decision under *PCC Structurals I*, before PCC is required to turn to the federal court of appeals to ask the Board to explain its reasoning. Here, PCC respectfully directs the Board to the finding that — unless this unit is appropriate under *PCC Structurals I* —

[5] Notably, there are three classifications in the proposed unit, not one.

nothing less than a "wall-to-wall" unit would be appropriate, according to the Regional Director.[6]

C. Summary Judgment Is Unwarranted Because the Governing Craft Unit Standards Were Not Applied, Without Explanation.

The Craft Majority's characterization of governing law is also fatally problematic on the craft unit issue. Doubtless, craft units are permitted under both the plain text of the Act and the standards discussed in *PCC Structurals I.* PCC brooks no disagreement with that principle. However, the Craft Majority appears to have overruled *sub silentio* the cornerstone of craft unit determination law *In re Mallinckrodt Chem. Works,* 162 NLRB 387 (1966) ("*Mallinckrodt*").

Mallinckrodt is supposed to be a matter of well-settled law. If the Board had desired to reverse or reconsider this case, the remand from *PCC Structurals I* back to the Regional Director should have been clear about that possibility. As it was, the Regional Director incorrectly applied pre-*Mallinckrodt* authorities to determine the separate identity of the welders rather than the correct *Mallinckrodt* test, and the Craft Majority agreed with this result. PCC respectfully submits that this was erroneous – an error that the Board should rectify before a federal court of appeals is required to intervene, and thus remand the case back to the Board.

Mallinckrodt is indisputably the lead precedent for unit determinations in craft severance questions. *See Battelle Mem. Inst.,* 363 NLRB No. 119, slip. op. at 1 (2016) (referring to "well-established policies under *Mallinckrodt*"); *see also, e.g., Specialty Healthcare*, 357 NLRB 934, 940 at n.16 (citing *Mallinckrodt* as "setting forth factors for determining when craftwide unit is appropriate"), *overruled on other grounds by PCC Structurals I.* At the time it issued *Mallinckrodt*, the Board also held that the *Mallinckrodt* approach should apply to cases even where there was no bargaining history and, thus, no severance issue. *E.I. DuPont de Nemours & Co.*, 162 NLRB 413, 417, 418 (1966) (discussing *Mallinckrodt* and "[a]pplying the Board's newly announced approach [in *Mallinckrodt*]" to find that petitioned-for electricians could be a separate craft unit). The Board has not overruled or modified *Mallinckrodt* since its issuance, although the Board has once confusingly referred back to *E.I. DuPont* for the applicable test for non-severance cases.[7] Thus, unsurprisingly, PCC cited to the Board and Regional Director both *Mallinckrodt*, and its progeny case, *North American Aviation*, 162 NLRB 1267 (1967), a case involving welders applying the *Mallinckrodt* standard to find that welders could not constitute a separate, appropriate unit.

[6] The Regional Director was blunt that the choice was between the petitioned-for unit and a wall-to-wall unit: "Moreover, assuming *arguendo* that the petitioned-for unit is found to be inappropriate, I find that the evidence is insufficient to show that anything less than a wall-to-wall unit would be appropriate." Supp. Dec. at 36.
[7] *Vincent M. Hippolito*, 313 NLRB 715, 715 n. 2 (1994). Here, the Board referred back to *E.I. DuPont*, not *Mallinckrodt*, for the test — even though *E.I DuPont* originally applied the *Mallinckrodt* test. In *Hippolito*, the Board asserted that the "absence of bargaining history on a more comprehensive basis, and the separate identity of the functions, skills, and supervision" were the correct analytical factors. *Id.* Even under that test, PCC's RFR should have been granted given the dispersion of the relevant employees and their supervisors, and PCC's functional integration.

North American Aviation is the *only case* applying the current, relevant *Mallinckrodt* craft standard to welders that PCC has been able to locate. The only later welder case, to PCC's knowledge, *CNH America LLC*, 25-RC-116569, Decision and Direction of Election, 2013 BL 469199 (Dec. 20, 2013), *review denied* 2014 BL 513046 (Jan. 16, 2014)), is not a basis to depart from *Mallinckrodt*.[8] The case is non-precedential as unpublished, and it is also distinguishable. *CNH America* involved a separate, discrete welding department under separate supervision and was also decided under the now-invalid *Specialty Healthcare* standard.

The conclusion that the Board overruled, or impermissibly ignored, *Mallinckrodt* flows inexorably from the reasoning of *PCC Structurals II*. In his Supplemental Decision on remand from *PCC Structurals I*, the Regional Director held that the petitioned-for unit was appropriate by applying five craft welder cases, all predating *Mallinckrodt*, stating:

- "The Board has found craft units of highly skilled welders to be appropriate. In *Hughes Aircraft Co.*, 117 NLRB 98 (1957), the Board found a craft unit of skilled aerospace welders to be appropriate." (Supplemental Decision at 24);

- "In *Lockheed Aircraft Corp.*, 121 NLRB 1541 (1958), the Board found a unit of highly skilled welders appropriate for craft severance from an existing production and maintenance unit. The Board found that, like the welders at issue in *Hughes Aircraft Co.*, the petitioned-for welders work with special and newer metals used in high-speed aircraft and were required to have high degrees of knowledge and skills." (Supplemental Decision at 24); and

- Concluded by citing another series of welder cases -- "*See also Aerojet General Corp.*, 129 NLRB 1492 (1961) (Board found that petitioned-for welders constitute a craft group that may constitute a separate appropriate craft unit, but the petitioned-for group was inappropriate for a self-determination election); *Arrowhead Products Div. of Mogul Bower Bearings, Inc.*, 120 NLRB 675 (1958) (directing a craft severance election of heliarc welders from existing production and maintenance unit); *Parker Bros. & Co., Inc.*, 118 NLRB 1329 (1957) (finding a welder craft unit appropriate, and including classifications who spend most of their time performing the same work and skills as the petitioned-for welders)." (*Id.* at 24-25.)

In contrast, the Regional Director expressly rejected consideration of *Mallinckrodt*, and the one welder precedent actually decided under the (now-governing) *Mallinckrodt* standard, *North American Aviation*, 162 NLRB 1267 (1967), two case authorities that PCC had argued were dispositive. The Regional Director apparently made this determination because (a) this case was not a craft severance case, and (b) the PCC welders at issue here "possess a high degree of specialization and skill acquired through extensive training":

[8] In *CNH*, then-Member Miscimarra, citing *North American Aviation, Inc.*, 162 NLRB 1267, 1270 (1967), noted that he "would find that the Employer has raised substantial issues about the appropriateness of a welders-only. bargaining unit that warrant[ed] granting review…" , further remarking that "the Board has not found a craft unit of welders to be appropriate since 1955 except in the aerospace industry." 2014 BL 513046.

> I find that the case cited by the Employer to be distinguishable. In *North American Aviation*, 162 NLRB 1267 (1967), the Board considered the appropriateness of a craft severance election for welders from a production and maintenance unit at aerospace manufacturing, research, and design plants. Then, under the standard for craft severance set forth in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967), the Board concluded that "it would not effectuate statutory policy to permit disruption of the existing production and maintenance unit." *Id.* at 1270. The welders in *North American Aviation* had skills "generally regarded as nonapprenticeable" and acquired their skills from "various sources." *Id.* While the Board stated that the welders at issue in *North American Aviation* were part of the employer's "continuous flow process," it noted that the welders also had frequent contact with the production and maintenance employees. Significantly, the Board highlighted that the union already representing the production and maintenance employees had effectively represented the welders at issue in the severance for the purposes of collective bargaining. I find that the instant case is distinguishable as there is no question of craft severance and no history of collective bargaining, but rather is an initial organizing campaign not subject to the legal standard set forth in *Mallinckrodt*. Moreover, unlike the welders in *North American Aviation*, the petitioned-for welders possess a high degree of specialization and skill acquired through extensive training.

Supp. Dec. at 35 n. 2.

For its part, the Craft Majority of the Board agreed with the Regional Director's determination, but instead found "instructive" *Hughes Aircraft* and another case, *C.F.Braun & Co.*, 120 NLRB 282 (1958):

> A separate majority (Members McFerran and Emanuel) agrees with the Regional Director that the petitioned-for welders are skilled journeymen craftsmen and that the petitioned-for unit is appropriate for bargaining as a craft unit.… Although this case does not involve severance issues or all the considerations that those issues raise, we find the discussions in *Hughes Aircraft,* above, and *C.F. Braun & Co.*, 120 NLRB 282 (1958), on the distinction between skilled craft and non-craft welders to be instructive. We note also that the petitioned-for welders here perform work in the aircraft industry and on military applications similar to the craft welders in, e.g., *Hughes Aircraft,* above.

PCC Structurals II at 1-2, n.1.

The central problem is that *all* of the cases cited by the Craft Majority as instructive and *all* of the craft welder cases cited by the Regional Director as persuasive *are craft severance cases.* All the welder cases noted by the Craft Majority are severance cases. *See Hughes Aircraft Co.*, 117 NLRB at 98 ("The Petitioner seeks to sever a craft unit of welders, their helpers, apprentices, and leadmen from an existing production and maintenance unit at the Employer's Tucson, Arizona, air guided missile plant, represented by the Intervenor."); *Lockheed Aircraft Corp.*, 121 NLRB at 1541 ("The Petitioner seeks to sever a craft unit of welders from the existing production and maintenance unit currently represented by the Intervenor, District Lodge 727"); *C F Braun & Co.*, 120 NLRB at 283 ("Petitioner seeks to sever

'all employees of C F Braun & Co. at its Alhambra, California, plant, who devote 50 percent or more of their time to welding or burning or a combination of both, and who are within the unit covered by the Employer's agreement with the Metal Trades Council of Southern California.'"). And, all of the welder cases relied upon by the Regional Director are also craft severance cases. *See Aerojet General Corp.*, 129 NLRB at 1492-1493 ("The Petitioner seeks to sever a craft unit of welders from the existing production and maintenance unit presently represented by the United Steelworkers of America, AFL-CIO, herein called the Intervenor."); *Arrowhead Products Div. of Mogul Bower Bearings, Inc.*, 120 NLRB at 675 ("Petitioner seeks a craft severance of heliarc welders from the existing production and maintenance unit represented by the Intervenor…"); *Parker Bros. & Co., Inc.*, 118 NLRB 1329 (1957) (finding a welder craft unit appropriate after remand for craft severance determination) *on remand from* 117 NLRB 1462, 1464 (1957)("There remains for consideration the alternative unit requests of the Petitioner for craft severance of a unit of welders and burners at the shipyard.").

So, what happened here was that the Craft Majority – following the Regional Director's lead – relied on older craft severance precedent created under a now-discarded craft severance test, instead of the valid precedent specific to welders under the currently applicable test, to deny review of the petition. We respectfully submit that this is erroneous, as the Board should not have ignored, and thereby *sub silentio* overruled, ***Mallinckrodt***. If it was the Board's desire to overrule *Mallinckrodt* (and *North American Aviation*), it should have expressly done so. But, the ultimate point is that the correct craft precedent to be applied was the ***Mallinckrodt*** standard, and thus the only extant welder case applying that standard, *North American Aviation*.

If the Board had applied *North American Aviation*, it would have found that PCC welders did not have a separate community of interest. Under *North American Aviation*, the Board held that welders had no separate community of interest where a "continuous flow" production process evinced several facts:

> We are also convinced that any separate community of interest possessed by the welders has been largely submerged into the more encompassing community of interest shared with all other employees. As heretofore indicated, the Employer's Tulsa operations involve a *continuous flow process*, with the work of welders *being performed in conjunction with that of nonwelders* and intimately related to the overall production effort. This, together with *frequent contacts between and interdependence of welders and nonwelders in performance of their duties, common supervision of welders and nonwelders*, and the fact that *the welders are themselves separated from each other both on a geographic and supervisory basis*, support our conclusion that they have common interests with the other employees.

Id. at 1271 (emphasis added). In the record here, PCC showed that its operations are indistinguishable from the above. For example:

- PCC's casting operation is a continuous flow process (RFR, 4-9);
- PCC welders' work – fixing flaws in the casts that are the core product of PCC – is performed in conjunction with that of PCC non-welders and is intimately related to the overall production effort – (RFR, 39-40): [Welders cannot perform their jobs without

working with grinders, vis dim inspectors, straighteners, or x-ray operators, all excluded positions. (Tr. 763:1-8; 767:23-25; 768:1-18; 769:1-24; 771:1-18; 1024: 19-25). All of these individuals must describe the terms of the defect, the dimensions of the defect, the severity, and, among other things, whether an otherwise acceptable defect is close to another defect that could cause further problems. (Tr. 40:23-25; 41:1-23; 1025:1-6)];

- There is no separate welding department (Tr. 43:7-17; 494:5-13), and some welders, including the crucible repair welders, are in an entirely separate department from all other welders with electrode fabricators (Tr. 813:5-6);
- Welders are dispersed on a geographic and supervisory basis throughout departments along with various other job titles (Tr. 183: 16-21; 467:17-17-468:15; 494: 10-20; 518: 5-11; 549: 22-550:7; 589:10-16);
- There are frequent contacts between and interdependence of welders and nonwelders in performance of their duties – [see above][9];
- Common supervision of PCC welders and nonwelders exists [see, e.g., Supp. Dec. at 29, 35], while no separate "welding department exists," nor are all welders in the same department. (Tr. 43:7-17; 52: 14-19); instead, welders span across 18 departments in four different physical locations, all of which include non-welders (see Ex. E-44), while welders are supervised by twenty-eight different supervisors and are combined with up to fifteen other job titles in any given department. (Tr. 43:7-17); and
- PCC welders are themselves separated from each other both on a geographic and supervisory basis – [see above].

Notably, the Craft Majority cannot rely on the Regional Director's alternative rationale for distinguishing *North American Aviation* — that PCC welders, unlike the welders in *North American Aviation*, had a "high degree of skill and specialization acquired through extensive training." Supp. Dec. at 35 n. 2. First, it is unfathomable that the *North American Aviation* welders, who worked on Apollo and Saturn spacecraft traveling 225,000 miles one way to the Moon, and also on supersonic cruise missiles, had less skill and specialization than PCC welders.[10] Second, the record belies that the petitioned-for unit's skills were acquired "through extensive training." Here, it is undisputed that PCC welders do not participate in an apprenticeship program, nor participate in any formal training program rising to the level of apprenticeship. PCC welders are not required to obtain outside training or certification prior to being hired into a welding position. (Tr. 257:1-5; 312:13-313:3). RFR at 23. Non-welders can bid into the position without any prior training, and some welders are hired without any experience. (Tr. 312:13-19).

[9] The Regional Director ignored all the evidence on this point to come to a contrary finding. (RFR, 20).

[10] The Craft Majority also appeared to believe that *Hughes Aircraft* was the most apposite precedent because it dealt with "military applications," similar to some of PCC's welding operations. *PCC Structurals II* at 1-2, n.1. However, so did *North American Aviation*, the most recent precedent, and that applies the relevant *Mallinckrodt* test. Indeed, the welders in *North American Aviation* likely had even more specialization than the *Hughes Aircraft* welders because of the nature of the space and missile platforms manufactured at North American Aviation. *See North American Aviation*, 162 NLRB at 1267-68 ("The Tulsa plants, with which we are here concerned, are within the Employer's space and information division and are engaged in a segment of that division's responsibilities under contracts with the U.S. Government *for research, engineering, design, and manufacture of missiles and components used in the Apollo, Saturn, and Hound Dog programs*.") (emphasis added) *See also* https://en.wikipedia.org/wiki/AGM-28_Hound_Dog (detailing that the Hound Dog was a supersonic, air-launched cruise missile used by the United States Air Force).

While Member Emanuel appeared to partially rest his view on the existence of a particular certification (NASAD), the fact that the welders have one particular certification should not be able to outweigh all the other factors listed in *North American Aviation* and identical to this case. Otherwise, the Board should simply overrule *North American Aviation* or, more fundamentally, *Mallinckrodt*. Because the Board did not overrule these precedents, PCC contends that special circumstances exist that warrant denial of the General Counsel's motion for summary judgment based on legal error. The Board should reverse its ruling.

IV. CONCLUSION

For any one of the three above-mentioned reasons, the Board should decline to grant summary judgment and grant the RFR instead, or, in the alternative, at least clarify all the above-mentioned issues in a published opinion.[11]

WHEREFORE, Respondent requests that the General Counsel's Motion for Summary Judgment be denied and the Complaint be dismissed in its entirety.

Respectfully submitted,

/s/ *Harry I. Johnson, III*

Harry I. Johnson, III
Crystal S. Carey
Morgan, Lewis & Bockius LLP
2049 Century Park East
Suite 700
Los Angeles, CA 90067-3109
Telephone: +1.310.255.9005

Lori Armstrong Halber, Esq.
Rick Grimaldi, Esq.
Samantha Sherwood Bononno, Esq.
FISHER & PHILLIPS LLP
150 N. Radnor Chester Road
Suite C300
Radnor, PA 19087
Telephone: (610) 230-2150
Facsimile: (610) 230-2151

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[11] Respondent further preserves all prior arguments raised in connection with the underlying cases, and the omission of those arguments from the instant Opposition does not constitute waiver.

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v.		
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 63		

CERTIFICATE OF SERVICE

Pursuant to Section 102.114 of the *Board's Rules and Regulations*, I hereby certify that on the 24th day of April, 2019, I e-filed Respondent PCC Structurals, Inc.'s Opposition to the General Counsel's Motion for Summary Judgment and Response to the Notice to Show Cause with the NATIONAL LABOR RELATIONS BOARD, and served a copy of the foregoing document to all parties in interest, as listed below:

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174-1078
ronald.hooks@nlrb.gov

Todd A. Lyon, Esq.
Fisher Phillips
111 SW 5th Ave., Ste. 4040
Portland, OR 97204-3643
tlyon@fisherphillips.com

Brian Keegan, VP-Human Resources
PCC Structurals, Inc.
4600 SE Harney Dr.
Portland, OR 97206-0825

Bill Anderson
IAMAW, Local Lodge 63
Gladstone, OR 97027-2595

Rick Grimaldi, Esq.
Samantha Bononno, Esq.
Fisher Phillips
150 N. Radnor Chester Rd., C300
Radnor, PA 19087
rgrimaldi@fisherphillips.com
sbononno@fisherphillips.com

Caren P. Sencer, Esq.
Caroline N. Cohen, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy, Ste. 200
Alameda, CA 94501-1091
csencer@unioncounsel.net
ccohen@unioncounsel.net

Harry I. Johnson III, Esq.
Morgan, Lewis & Bockius LLP
2049 Century Park E. Ste. 00
Los Angeles, CA 90067-3109
harry.johnson@morganlewis.com

Crystal S. Carey, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
crystal.carey@morganlewis.com

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570-0001
roxanne.rothschild@nlrb.gov

/s/ J. Carlos Gonzalez

J. Carlos Gonzalez
Morgan, Lewis & Bockius LLP
300 South Grand Ave. 22nd Floor
Los Angeles, CA 90071-3132
carlos.gonzalez@morganlewis.com